



January 19, 2001

Mr. Keith Stretcher
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2001-0199

Dear Ms. House:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143427.

The City of Midland (the "city") received a request for:

all of the records of [the city] for the years 1999 and 2000 to date concerning the employment by [the city] of private and public attorneys for legal service, including, but not limited to, engagement letters, fee agreements, invoices, bills, statements, checks and vouchers for legal services and information relating to the expenditure by [the city] of funds for legal services.

You state that the city has released some of the requested information to the requestor. However, you claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.103, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin by noting that the submitted materials consist entirely of legal fee bills. A bill for attorney's fees is subject to disclosure under section 552.022(a) of the Public Information Act. Section 552.022(a) provides in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(16) information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege[.]

Gov't Code § 552.022(a)(16). For the purposes of section 552.022(a), sections 552.103 and 552.111 of the Government Code do not constitute "other law" that makes information expressly confidential. *See* Open Records Decision No. 665 at 2 n.5 (2000) (explaining that sections 552.103 and 552.111 are not confidentiality provisions). Therefore, the city may not withhold any of the submitted information under section 552.103 or 552.111. Thus, with the exception of any information that is subject to the attorney-client privilege under section 552.107(1), the contents of the submitted bills for attorney's fees are subject to required public disclosure under section 552.022(a)(16) and must be released.

Accordingly, we address whether the attorney-client privilege, as encompassed by section 552.107(1), applies to the requested information. Section 552.107(1) excepts information from disclosure if:

it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct.

Gov't Code § 552.107(1). In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Section 552.107(1) does not protect purely factual information. *Id.* The attorney general explicitly found that a governmental body may withhold information in an attorney fee bill only to the extent that the information reveals client confidences or the attorney's legal advice. *See* Open Records Decision No. 589 (1991). Moreover, in Open Records Decision No. 589, the attorney general determined that the "attorney-client privilege" exception did not protect a requested list of "phone calls and conferences regarding a particular matter" or indications that an attorney had reviewed documents relevant to the attorney's representation of the government body.

We note that, contrary to the requirements of the Public Information Act, the city failed to mark the portions of the bills for which it claims the privilege. *See* Gov't Code § 552.301(e)(2). Moreover, the city failed to identify the parties named in the submitted bills. Therefore, having reviewed the submitted bills, we find that the city has not established that any of the information is privileged under section 552.107(1).

You also argue that the tax identification numbers that appear on the legal fee bills are confidential under section 552.101 in conjunction with common law privacy. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public.

Id. at 683-85. We point out, however, that a corporation or other business entity does not have a common law right to privacy. *See* Open Records Decision No. 600 (1992). Because the tax identification numbers correspond to business entities rather than to private individuals, they are not confidential under common law privacy.

However, prior decisions of this office have held that title 26, section 6103(a) of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Generally, any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code is confidential. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984). Because the tax identification numbers constitute tax return information, the city must withhold the numbers from disclosure under section 552.101 as information deemed confidential by federal statute.

In conclusion, the city must redact the tax identification numbers that appear on the submitted legal fee bills under section 552.101. The city must release the remainder of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

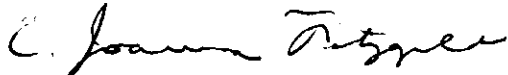
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/er

Ref: ID# 143427

Encl: Submitted documents

cc: Mr. Hal L. Kempf
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(w/o enclosures)